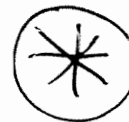




Superseded Notice



Route to:

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Tara

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TYPE _____ STAFF _____
 YEAR _____ ADVISEE _____
 NO. _____ REQUESTOR from: Hyfa
 DATE 10/13/99 AGENCY _____

SUBJECT:

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<input type="checkbox"/> campaign	<input type="checkbox"/> lobbying	<input type="checkbox"/> § 84308	<input type="checkbox"/> use
<input type="checkbox"/> sei	<input type="checkbox"/> revolving door	<input type="checkbox"/> gift limits	<input type="checkbox"/> misc
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RE A-85-050

CODE §§ AND REGULATIONS: _____

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SUPERSEDES: (Note if and why this advice letter supersedes others in whole or in part)

The *Curiel* Opinion should be marked **SUPERSEDED** in our files and on Westlaw and Lexis.

The *Curiel* Opinion, 8 FPPC Op. 1, was superseded by a 1984 statutory change removing "quasi-judicial" from section 84308. Chap. 1681, 1984 Stats. (AB 2992, effective 10/1/84.) The Commission sponsored this legislative change. The *Fallon* Advice Letter, No. A-85-050, discusses how the 1984 amendments supersede *Curiel*.

State of California



Fair Political Practices Commission

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June 6, 1985

Donald J. Fallon
Deputy County Counsel
County of Santa Clara
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110

Re: Your Request for Advice
Our File No. A-85-050

Dear Mr. Fallon:

Thank you for your request for advice concerning the application of Government Code Section 84308 to a Local Agency Formation Commission ("LAFCO").^{1/}

As you know, Section 84308 was amended last year by Chap. 1681, 1984 Stats. (AB 2992, effective 10/1/84). Previously Section 84308 applied only to quasi-judicial proceedings involving a license, permit or other entitlement for use. The term "quasi-judicial" was removed from the statute, and all proceedings involving a license, permit or other entitlement for use are now covered. Prior to the 1984 amendments, in its Curiel Opinion, 8 FPPC Opinions 1 (No. 83-003, Sept. 7, 1983), the Commission had determined that, while LAFCOs were not exempt from the coverage of Section 84308,^{2/} the types of proceedings

^{1/} Government Code Section 84308 is a part of the Political Reform Act. All statutory references are to the Government Code.

^{2/} The exemption for bodies whose members are directly elected by the voters remains the same in the statute as amended. LAFCOs are not exempt since the members are not directly elected.

conducted by LAFCOs had been traditionally termed "quasi legislative" by the courts and thus fell outside of Section 84308. Based on the statutory change, it is our conclusion that the Curriel Opinion is no longer relevant. Since the quasi judicial/quasi legislative distinction no longer applies, the issue is whether any of the types of proceedings conducted by LAFCOs involve a "license, permit or other entitlement for use" as that term is now defined.^{3/}

The term "entitlement for use" does not have a set legal meaning. The overall scheme and purpose of Section 84308 suggests that the types of proceedings which should be covered are those in which specific, identifiable persons are directly affected or in which there is a direct substantial financial impact upon the participants. Section 84308 does not cover proceedings where general policy decisions or rules are made or where the interests affected are many and diverse.

LAFCOs have the power to review and approve or disapprove, or approve conditionally, subject to certain limitations, the following:

1. The annexations of territory to cities or special districts;
2. The incorporations of cities;
3. The formation of special districts.

In addition, LAFCOs are required to adopt a "sphere of influence" plan for each local agency within the county which spells out the probable ultimate physical boundaries and service area of the agency. Section 54773, et seq. These plans are used as a factor in decisions on specific proposals.

1. Annexations.

Annexations (and deannexations) have been termed "entitlements for use" by the courts. See People ex rel. Younger v. Local Agency Formation Com. (1978), 81 Cal. App. 3d 464, 476; Bozung v. Local Agency Formation Com. (1975), 13 Cal. 3d 263, 268-279. In both of the cases, the question was whether

^{3/} Section 84308(a)(5) defines the term to include "all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises."

Citation	Search Result	Rank 14 of 14	Database
CA FPPC Op. 83-003			CA-ETH
8 FPPC Op. 1			
(Cite as: 1983 WL 191085 (Cal.Fair.Pol.Prac.Com.))			

California Fair Political Practices Commission

*1 IN THE MATTER OF: OPINION REQUESTED BY: ROBERT D. CURIEL COUNTY COUNSEL
HUMBOLDT COUNTY
No. 83-003
September 7, 1983

BY THE COMMISSION: We have been asked the following question by Robert D. Curiel, County Counsel of Humboldt County:

Are members of the Humboldt County Local Agency Formation Commission ("LAFCO") subject to the provisions of Government Code Section 84308?

More specifically, we have been asked to determine:

- (1) Whether the LAFCO is exempt from the provisions of Government Code Section 84308 as a "legislative body;" and
- (2) If the LAFCO is not exempt as a legislative body, whether it is a "quasi-judicial" body covered by the section.

CONCLUSION

Under Commission regulations, the LAFCO is not a "legislative body" exempt from Government Code Section 84308. However, because all the LAFCO's activities have been determined by the courts to be quasi-legislative, rather than quasi-judicial, a LAFCO is not a quasi-judicial body covered by Government Code Section 84308.

ANALYSIS

Government Code Section 84308 [FN1] (the "Levine Bill") prohibits members of any quasi-judicial agency, other than a "legislative body," from soliciting or accepting campaign contributions of \$250 or more from persons participating in proceedings involving licenses, permits or other entitlements for use. It also requires disclosure and disqualification in connection with such proceedings by a member of a covered agency if the member has received campaign contributions of \$250 or more within the past 12 months from any participant in the proceedings. Thus, if the Humboldt County LAFCO is not exempt from Section 84308 as a legislative body, and if it is a quasi-judicial agency, its members are covered by the section whenever the LAFCO acts on licenses, permits or other entitlements for use.

A LAFCO [FN2] is a county regulatory agency whose primary function is to approve or disapprove applications for annexation of territory to local agencies within the county. No annexation or deannexation can be made to a city, no city can be incorporated, and no change can be made to a police, fire, school, sewage, water or other district without first obtaining LAFCO approval. In addition, LAFCOs have oversight and planning functions with respect to future development in their

CA FPPC Op. 83-003

(Cite as: 1983 WL 191085, *1 (Cal.Fair.Pol.Prac.Com.))

counties.

Every county is required to have a LAFCO. Each LAFCO has five appointed members. Two members must be county supervisors, appointed by the Board of Supervisors. Two members must be city officers, appointed by the city selection committee. One public member is appointed by the other four commission members.

A LAFCO is not a "Legislative Body" Within the Meaning of Section 84308(d).

Section 84308(d) exempts "legislative bodies such as city councils, county boards of supervisors, and the State Legislature" from the coverage of Section 84308. The Commission previously has, by regulation, [FN3] interpreted this to mean that only boards or commissions whose entire membership is directly elected by the voters are exempt from the coverage of Section 84308. Since members of the LAFCO board are appointed, the LAFCO is not a "legislative" body exempt from Section 84308 under the Commission's regulation. [FN4] See Horwath v. Local Agency Formation Comm. (1983) 143 Cal. App. 3d 177, 191 Cal. Rptr. 593, which refers to a LAFCO as a "quasi-legislative" agency.

An Agency is Covered by Section 84308 When, and Only When, it Engages in the Type of Activities Which are Traditionally Termed "Quasi-Judicial" by the Courts.

*2 Section 84308 applies to "quasi-judicial boards and commissions which act on licenses, permits, or entitlements for use." The term "quasi-judicial board or commission," is not defined by the statute. It is, furthermore, a term which is ordinarily used to describe the functions of an administrative agency, not to describe the agency itself. Some agency functions, because they resemble the adjudicatory functions of courts, are called "quasi-judicial." Quasi-judicial proceedings generally determine the rights of specific parties, or apply existing law to specific situations. Examples of quasi-judicial proceedings include proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits. Other agency functions, because they resemble the law-making functions of the State Legislature, are called "quasi-legislative." [FN5] Quasi-legislative proceedings involve adoption of rules of general applicability which apply primarily to future situations. Examples of quasi-legislative proceedings include annexations of territory to a city or district, adoption or amendment of zoning ordinances, adoption of regulations, or granting of franchises. [FN6] Most government agencies at some time perform quasi-judicial functions, and at others quasi-legislative functions.

Recognizing that most agencies have dual functions, the most logical way to interpret the phrase "quasi-judicial board or commission" in Section 84308 is to say that an agency is a quasi-judicial body when, and only when, it performs traditionally quasi-judicial functions. This interpretation -- an agency is quasi-judicial only when it is acting in a quasi-judicial capacity -- is consistent with the general usage of the term "quasi-judicial." For example, it has been said that a board of supervisors exercising quasi-judicial powers

CA FPFC Op. 83-003

(Cite as: 1983 WL 191085, *2 (Cal.Fair.Pol.Prac.Com.))

"becomes a quasi-judicial body" for that purpose. DiGenova v. State Board of Education (1955), 45 Cal. 2d 255, 269, 288 P2d 862. In a more recent case, a LAFCO was described as a "quasi-legislative administrative agency" because the functions it performs are solely quasi-legislative. Horwath v. Local Formation Comm., (1983), 143 Cal. App. 3d 177, 183, 191 Cal. Rptr. 593.

Although determining whether a specific agency function is quasi-judicial or quasi-legislative may be difficult in some cases, [FN7] a large number of the most common administrative functions have already been classified by the courts or by the Legislature as either quasi-judicial or quasi-legislative. [FN8] In situations where the courts have not specifically ruled on whether a particular type of action is quasi-judicial or quasi-legislative, one can look at the procedures used in making or reviewing the decision. For example, a procedure conducted under the administrative adjudication provisions of the Administrative Procedure Act [FN9] is, by definition quasi-judicial. So is any procedure which is reviewable by "administrative mandamus." [FN10] In those cases in which it is unclear whether an action is quasi-legislative or quasi-judicial, the same tests that courts use to determine whether an action is quasi-judicial or quasi-legislative should be applied.

*3 From our ruling [FN11] -- that an agency is "quasi-judicial" under Section 84308 only when it performs a function which would traditionally be classified as quasi-judicial -- it is apparent that LAFCOs are not covered by this section. The courts have consistently ruled that the functions exercised by LAFCOs are quasi-legislative. [FN12] So long as LAFCOs continue to exercise only quasi-legislative functions, they will continue to fall outside the coverage of Section 84308.

Adopted by the Commission on September 7, 1983. Concurring: Commissioners Conrad, Lemons, Stanford and Ziffren Dissenting: Commissioner Metzger

Dan Stanford
Chairman

FN1. All statutory references are to the Government Code unless otherwise stated.

FN2. Government Code Sections 54773-54863.

FN3. 2 Cal. Adm. Code Section 18438.1(a).

FN4. In view of our decision, *infra*, interpreting the term "quasi-judicial board or commission," there is no need for us to reconsider 2 Cal. Adm. Code Section 18438.1(a) in this opinion, and we decline to do so.

FN5. *City of Chula Vista v. Superior Court* (1982) 133 Cal. App. 3d 472; *Patterson v. Central Coast Regional Comm.* (1976) 38 Cal. App. 3d 833, 839-841; *Natural Resources Defense Council, Inc. v. Cal. Coastal Zone Conservation Comm.* (1976) 57 Cal. App. 3d 76, 83, 129 Cal. Rptr 57; *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 113 Cal. Rptr. 836.

CA FPPC Op. 83-003

(Cite as: 1983 WL 191085, *3 (Cal.Fair.Pol.Prac.Com.))

FN6. Arnell Development Co. v. City of Costa Mesa (1980) 28 Cal. 3d 511; Patterson v. Central Coast Regional Comm., supra; Landi v. County of Monterey (1983) 139 Cal. App. 3d 934, 936-937, 189 Cal. Rptr. 55.

FN7. "The issue whether a function is legislative or judicial is sufficiently complex to baffle the most sophisticated courts which routinely must deal with the issue." City of Chula Vista v. Superior Court (1982), 133 Cal. App. 3d 472, 486, 183 Cal. Rptr. 909.

FN8. See footnotes 5 and 6, supra.

FN9. Sections 11500, et seq.

FN10. Code of Civil Procedure Section 1094.5. Patterson v. Central Coast Regional Comm. (1976) 58 Cal. App. 3d 833, 840, 130 Cal. Rptr. 169.

FN11. In making this ruling we specifically disapprove our prior regulation, 2 Cal. Adm. Code Section 18438.1(c).

FN12. Horwath v. LAFCO, supra.

END OF DOCUMENT

State of California



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June 6, 1985

Donald J. Fallon
Deputy County Counsel
County of Santa Clara
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110

Re: Your Request for Advice
Our File No. A-85-050

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Thank you for your request for advice concerning the application of Government Code Section 84308 to a Local Agency Formation Commission ("LAFCO").^{1/}

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The term "entitlement for use" does not have a set legal meaning. The overall scheme and purpose of Section 84308 suggests that the types of proceedings which should be covered are those in which specific, identifiable persons are directly affected or in which there is a direct substantial financial impact upon the participants. Section 84308 does not cover proceedings where general policy decisions or rules are made or where the interests affected are many and diverse.

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1. Annexations.

Annexations (and deannexations) have been termed "entitlements for use" by the courts. See People ex rel. Younger v. Local Agency Formation Com. (1978), 81 Cal. App. 3d 464, 476; Bozung v. Local Agency Formation Com. (1975), 13 Cal. 3d 263, 268-279. In both of the cases, the question was whether

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an annexation proposal (deannexation in Younger) was a "project" within the meaning of the California Environmental Quality Act (Pub. Resources Code Section 21000, et seq.) which required an environmental impact report.^{4/} In Bozung, supra, the Supreme Court rejected the defendants' argument that LAFCO approval of a specific annexation proposal was more like a feasibility or planning study than the enactment or amendment of a zoning ordinance, since the express purpose of the proposal by Kaiser and the City of Thousand Oaks was to convert 677 acres of agricultural land into an urban subdivision. The Court held that, since annexation was an irrevocable necessary step, any annexation which could have a significant effect on the environment was a project covered by CEQA. 13 Cal. 3d at 278-279.

Based on these authorities and in view of the purposes of Section 84308, it is our view that annexations (and deannexations) involve an "entitlement for land use" within the meaning of the law. Annexation is often a necessary step in the processing of large development projects where private financial interests are at stake. It is this type of proceeding where campaign contributions are often perceived as a means of purchasing influence over the decision that the law was intended to cover. Cf. Woodland Hills Residents Assoc. v. City Council (1981), 26 Cal. 3d 938.

2. Incorporations.

Incorporation proceedings begin with the filing of an application by the proponents of the new city with the county. Notice is given, and a hearing is held before the county's LAFCO, which has the power to approve, amend, condition or disapprove the proposal. Section 54790, et seq. No petition for incorporation may be circulated or filed with the board of supervisors without LAFCO approval.^{5/} As the court noted in

^{4/} The CEQA guidelines provided that project included "[a]n activity involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use by one or more public agencies." 14 Cal. Adm. Code Section 15037(a) (3) (emphasis added).

^{5/} After approval by LAFCO, petitions are circulated among residents within the proposed boundaries; after the requisite number of signatures is gathered, the board of supervisors holds a hearing, and, if all the requirements are met, calls an election on the incorporation.

Curtis v. Board of Supervisors (1972), 7 Cal. 3d 942, the financial and political interests involved in an incorporation proceeding are varied and diverse, and the issues directly affect all of the people, businesses and property within the proposed city boundaries. Therefore, it is our conclusion that an incorporation is not an "entitlement for use" within the meaning of Section 84308, and the prohibition and disclosure/disqualifications requirements of Section 84308 do not apply to LAFCO members in incorporation proceedings.

3. Formation of Special Districts.

In Curtis, supra, the court distinguished between the incorporation of cities and the formation of special districts on the question of treating landowners differently from nonlandowners as follows:

In this connection respondents lay particular emphasis on special districts of limited powers, pointing to some 42 statutes which restrict the right to sign petitions or instruments of protest to landowners. We point out that for the most part these statutes involve special districts that cater to, and express, special interests. Our holding in the instant case pertains to the validity of a restricted franchise as to the formation of a city of general powers and does not necessarily apply to special districts, whose design, powers and methods of financing are more closely related to ownership of land. (Citation omitted.)

7 Cal. 3d at 960.

In those situations where a special district involves the creation of a special use or benefit to the persons in the district, the formation proceedings for the district are proceedings which involve an "entitlement for use" covered by Section 84308. It appears to us that water, irrigation and similar districts fall into this category,. On the other hand, the formation of school and cemetery districts do not create "entitlements for use" within the meaning of Section 84308. Thus whether Section 84308 applies to a special district formation proceeding depends on the type of district being formed. We will be happy to advise further on this point.

4. Adoption of "Sphere of Influence" Plans.

"Sphere of influence" plans are general planning documents adopted by LAFCOs which are intended to guide them in their

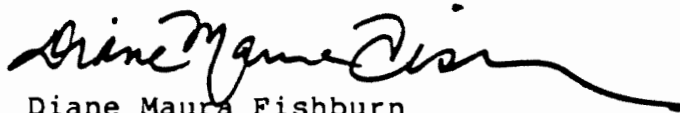
Donald J. Fallon
June 6, 1985
Page 5

determination of specific proposals. It is our view that these types of general plans do not create any "entitlement for use" within the meaning of Section 84308. Thus "sphere of influence" proceedings are not covered by this law.

In summary, incorporation and "sphere of influence" proceedings before LAFCOs are not covered by Section 84308. Annexation proceedings are covered, and special district formation proceedings are covered only if the special district involves the creation of an entitlement for use.

Please feel free to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Maura Fishburn", with a long, sweeping horizontal line extending to the right.

Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh